

### **Rejection under 35 U.S.C. § 102(e)**

Claims 38-39 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Pat. No. 6,698,838 to Kain. It is respectfully submitted that the declaration under 37 C.F.R. § 1.131 submitted herewith overcomes these rejections. Attached herewith is a signed declaration under 37 C.F.R. § 1.131 to establish invention of the subject matter of claims 38-39 prior to the effective date of the Kain patent. The declaration includes drawings of the claimed armrest assembly dated August 28, 2001, showing the armrest assembly to be pivotably attachable to a child car restraint. These drawings show a pivotable armrest for use in connection with a child car restraint having an aperture therethrough for pivotally coupling the armrest to the body of the restraint. As can be seen in those drawings, the armrest includes an aperture therethrough for pivotally coupling the armrest to the body. Additionally, a drawing is provided that shows a mount for use in connection with pivotably mounting an armrest for use in connection with a child car restraint.

It is respectfully submitted that the above information is sufficient in character and weight to establish at least one of: (a) a reduction to practice prior to the effective date of the Kain patent; or (b) conception of the invention prior to the effective date of the Kain patent coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the present application. Therefore, it is respectfully submitted that the Kain patent is no longer available as prior art against the claims of the present application, and that claims 38-39 are allowable over that reference.

### **Rejections under 35 U.S.C. § 103(a)**

Claims 38 and 39 additionally stand rejected as being obvious over U.S. Pat. No. 5,054,853 to Gillies et al. in view of the teachings of U.S Pat. No. 6,203,101 to Chou et al. as well as EP 576,847 to Schraeder. The rejection of those claims on that basis is respectfully traversed in that Chou et al. is clearly not analogous prior art for application to the present invention and, even if it was, is not properly combinable with the teachings of Gillies et al. and Schraeder et al. because there is absolutely no suggestion or motivation found in the art to do so.

Initially, it is noted that Chou et al. is directed to an armrest device for use with an office chair. One of ordinary skill in the art in designing child and infant car restraints

would not look to prior art teachings directed to office chairs, particularly when there is no suggestion or motivation for that person to do so. The field of endeavor of Chou et al. (furniture for offices) is so far removed from the field of endeavor of the present application (car restraints for children) as to be practically incomparable. And since it is the field of endeavor of the inventor which is relevant, the Chou et al. reference cannot be considered analogous art for the purposes of a 103 rejection. More specifically, since the field of endeavor of Chou et al. deals with different structures (office chairs vs. car restraints) for different purposes (providing seating in an office vs. restraining a child in a vehicle) under different conditions (stationary office vs. moving vehicle) that the field of endeavor the Applicants' are dealing with, the teachings of the Chou et al. reference must be disregarded with respect to the claims of the Applicants' invention. M.P.E.P. §2141.01; *In re Clay*, 966 F.2d 656 (Fed. Cir. 1992). Thus, the Chou et al. reference cannot be considered to be pertinent prior art in the field of infant and child restraints and is unavailable for use by the Office in this case.

Additionally, it is noted that even if this were not the case, the 103 rejection must fail because there is absolutely no suggestion or motivation to combine the other two cited references with the Chou et al. reference in the manner suggested by the Office. This is certainly understandable given the fact, as noted above, that infant child restraints (the field of endeavor of the present invention as well as the Gillies et al. and Schaefer references) are in an entirely different field of endeavor than office furniture. The simple fact is, while the idea of incorporating pivotable armrests into a child or infant restraint in the manner accomplished by the Applicants of the present invention may seem, on its face, simple, that fact alone should not negate the patentability thereof. “We cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” *Ecolochem, Inc. v. Southern California Edison Company*, 227 F.3d 1361, 1371 (Fed. Cir. 2000) (citing *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596 (Fed. Cir. 1988)). The *Ecolochem* court counseled that “the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references” which is what should be practiced in the present case.

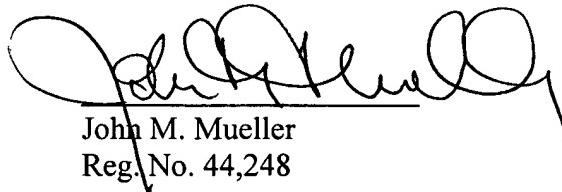
Furthermore, the Office’s broad conclusory statement that “the safety seat of Schraeder can easily be modified with pivotal armrests at pivot axis 23” adds no weight

to the Office's obviousness argument. It is well known that "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'" of motivation to combine the references. *Ecolochem*, 227 F.3d at 1372 (citing *In re Dembicza*k, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed.Cir.1999)). In fact, if anything, this statement actually supports the Applicants' argument that the addition of pivotable armrests to child car restraints in the manner claimed by Applicants is not obvious at all. Indeed, if such a modification of the prior art is as "obvious" as the Office contends, and the art is as "old" and "well known" as the Office claims, it should be easy enough for the Office to produce a reference which either discloses the Applicants' invention identically or at least provides some motivation to combine analogous prior art to render the Applicants' claimed invention obvious. If anything, the Office's failure to produce such prior art is evidence in and of itself of the non-obviousness of Applicants' invention.

In light of the foregoing, it is respectfully submitted that claims 38-39, now pending, are patentably distinct from the references cited and are in condition for allowance. Reconsideration and withdrawal of the rejections of record is respectfully requested.

In the event that the Examiner wishes to discuss any aspect of this response, please contact the undersigned at the telephone number provided below. The Office is authorized to charge any additional fees required by this submission, including the one month extension fee, to Deposit Acct No. 50-3072.

Respectfully submitted,



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